

US EPA ARCHIVE DOCUMENT

forward to this level.

I wanted to ask and I know there has been some discussion that travel funds are not being made available for grass roots folks and community based folks to get to the meeting and that may be an impingement for some people to be able to come and it may also stifle the voice of that constituency who do not live within a train ride or a bus ride from DC to be able to get there.

Is there any give and take about that and is there any way to make it possible for as many folks to get there from around the country as possible?

MS. GARCIA: I will definitely take that back. My understanding is that I guess the general, any time the White House has a meeting especially for security and everything else that there is not those types of scholarships but I understand that this is a little different so I will make sure that we talk to CEQ and see if there is something we can do.

Then of course I completely understand that even if there were some scholarships that it may be difficult so I am really hoping that this will be the kick off event and then we hope to go out to communities and meet folks where they live.

MS. YEAMPIERRE: Although Lisa I do understand in all fairness that a lot of grass roots leaders have been invited, people who actually have a base that they are accountable to that have been invited or is that wrong?

MS. GARCIA: It is not exclusive to the NEJAC that is correct. So, there is definitely grass roots groups that have been invited and we are hoping that they can get there or maybe talk to some funders to see if they can get sponsored but I will definitely take the question back to see if there is some leeway there to assist with that.

MS. YEAMPIERRE : Wynecta?

MS. FISHER: Thank you Madam Chair. Ms. Garcia, do you think it might be possible for those individuals that cannot travel if they could get to a, I am going to deem it as a secured location, whether it is a military installation or an FBI office, I mean you would still have to go through the same clearance, and they could possibly have a video conference where you would still be able to at least hear what is being said and possibly participate?

MS. GARCIA: Yes, that is a great recommendation. I know we did something where we had a web cast for one meeting, so figuring out if there is a way to open up. Yes, I mean I would need to figure out what the White House security like you said FBI I don't know but we will have to talk about that and figure that out. But thank you.

MS. FISHER: When Chair Sutley came to New Orleans for the Ocean Policy Task Force they actually, I don't know how they did it, but they had to people in Florida and they had people in Mississippi via video.

MS. GARCIA: Okay, that is good to know thanks.

MS. YEAMPIERRE: Thank you. Victoria?

MS. ROBINSON: Thank you, Elizabeth. I just wanted to clarify for those in the audience the invitations that the NEJAC members received to the White House Forum, they were one of many that was sent out to individuals.

However, this is not sent to the NEJAC members as the council. They received invitations individually because of their role and participation in Environmental Justice, so it is definitely not a NEJAC function or subject to the Federal Advisory Committee Act so that people are very clear on that, okay? Thank you.

MS. YEAMPIERRE: Thank you. So we are going to transition now to John who has been working diligently for the last six weeks on the permitting charge and he will be presenting and moderating the next part of the agenda.

### ***NEJAC Preliminary Response to Permitting Charge***

MS. RIDGWAY: Thank you, Elizabeth. Good morning everybody and in the audience thanks for coming on back today. I think this is going to be a pretty interesting presentation and conversation.

What I want to start with is to lay out kind of a strategy for getting through the next hour and a half and then we will get into the substance of the preliminary report in a moment.

The first thing that I want to cover or just remind everybody about process, this is a draft and it is by no means complete. So, the purpose here will be to focus on substance of the recommendations and the background to those recommendations.

We are going to be pretty tolerant of typos and things of that nature because there will still be time to correct those. So, we will just focus on the substance and certainly we will welcome comments on corrections as well but we don't want to take time on that here.

In terms of looking at substance, the general goal I would like to get out of today's deliberations is to look for what is not clear so that we can clear that up for you. You are the audience council members at this point of what the subgroup created, so it is really not out there for the full public yet.

There is certainly the possibility that you can all say this needs to be sent back and reworked, so this is why I want to just be sure that it is still a process in motion here but my goal would be to clarify any questions and also to get input in terms of anything that you think is missing that we should get in there.

So again, we are looking for clarification where needed and what is missing that we should consider and add into that and if we are lucky we can take what we hear today, this morning, and if we need to add a little bit more in there so that we can get this wrapped up and have the council accept it then it would go back into the finalization process where we would address the typos and wrap it up and then we would have a chance to send it on.

I don't know if we will get to a voting process or not today or tomorrow on that but we may be able to wrap it up in emails if we don't.

The summary is not written yet purposely such that we can take into account what we hear today and over the next day in terms of maybe I might need to report back tomorrow if we hear things of substance that we have to go back and chew on.

So that is why there is no summary yet but the summary should certainly be consistent with the core of the reports. So there will not be anything new in the summary that you won't already be aware of.

My humble request of the subgroup that worked on this is to listen and take good notes on the comments of your fellow council members so that the comments I would hope to engage in dialogue here will be primarily from council members that were not on the subgroup.

Certainly, you subgroup folks are welcome to chime in as well but I want to give the other council members a chance to be sure to have plenty of time to address your questions and/or comments and advice.

I may be a little informal in terms of saying, hey it is okay to chime in if you have a question or for clarification, I will do my best to facilitate that and ask Elizabeth too to keep her eyes open for your cards going up, but it is going to be kind of an informal conversation in this regard.

So, with that I will kick into a little of the background then I will get into the substance of the report and I think what we will do is we will project up onto the screen what was passed out to you yesterday which is a summary of the recommendations without all the background that led to those recommendations.

We will go through each one of those briefly but to be sure that you all understand the recommendations we are making. That is kind of the meat of what we are delivering here and you need to feel free to ask, what did you mean by this or that so we will probably go through each one of those and that will be probably the core of the amount of time and in deliberations.

At the end I want to take five minutes maybe to summarize what we hear collectively and be sure we understand the advice that you will pass along to us.

With that, I will get into some caveats here. The charge is in the report and it was pretty broad in some regards, and I am paraphrasing here, what kinds of permits should EPA be looking at to address or enhance Environmental Justice and not just look at but first or initially.

So, I don't think we were asked to say, look at these kinds of permits and don't look at those kinds of permits but rather where should the focus start with and it is a very big topic and frankly it was way more than we had time to get into in great detail.

So the process here was a little different than what I have observed with prior NEJAC charges where there has been many months, sometimes years, that go on before there is a final product.

Whereas here we were given the charge at the end of July and by the time we had our first caller we were well into August and so we really did only have about six weeks to map out how we were going to go about this charge and the first thing right off the bat was, well this is not going to be a comprehensive effort because we don't have the time for deliberations, for research.

When you are looking at all the different kinds of permits and implications around those

permits this could keep a lot of people busy for a long time and yet we didn't have that.

So, I am not making apologies by any means but rather just say we just didn't even try to think that this was going to be a fully comprehensive review of all the dynamics around permits that could be deliberated on with a greater amount of time and resources.

So, we were trying to cover some fundamental concepts here and ideas in our recommendations understanding that there may be nuances there that were not captured, challenges certainly where things are easier said than done, that is all assumed as we started this and as we went through it.

I want to recognize the subgroup members. We had Don Aragon who wasn't here. We had Hilton Kelley, and going around the room here, we had Sue Briggum and we had, I am still waking up here this morning, Vernice and Shanghar and Edith and who else did I forget here, Jody right, thank you.

So that was it and I did kind of caught up in process because we had such a short amount of time. We scheduled the meetings right up front and we just said, here is the way we are going to go about it and we will do our best. So that is enough on the caveats.

I think the fundamental recommendation was that if EPA really wants to garner the advice of the NEJAC on all the ramifications of permits it is going to take more resources and time. So whether they want to do that or not is up to them, but I think we dished up a lot for them to chew on.

So there is a healthy exchange here where they challenged us to turn around something very quickly and now we get to challenge them to digest everything we are dishing up for them and they have plenty to work on. Whether or not a subgroup gets set up in a more formal context with more people or a workgroup that might bring in other folks that are not council members as experts.

So it is different that way and I am kind of curious to see if it works in the context of turning this around in a quick way and giving EPA something to start working on right away at the same time understanding that there may be more research and work and deliberations that follow.

Any questions to start with before I get into the recommendations about what I have just shared or processed? Anything there? Okay.

So maybe I can ask — what I will do also is I will go through kind of by section in terms of the recommendations.

So there are really two documents here, the draft report which was sent out to council members about a week ago is about 26 pages and that includes appendices and really what you got sent out yesterday would be another appendices and a quick summary of the recommendation.

I will start with the first kind of general section which was after just noting the charge we felt it was important to lay some context and so we started with Section 3 and I am on page 2 here of just general considerations.

The first was beyond, the workgroup might be appropriate to get into this more, was there is already a lot of hard work and good recommendations that this council in its prior work have already produced regarding permitting and those are noted in the document but we just wanted to remind all readers that we had no interest in reinventing the wheel here.

There is just plenty to work with and some of those reports were produced 10 years ago and it is certainly possible that given a new administration and turnover that perhaps all those reports were not fully digested by the most current leaders of EPA or the folks that are involved in permitting and we had to say, you need to go there first. You need to look at the work that has already been done and that is the huge foundation of what this is built upon.

So we wanted to recognize that and then be sure that we didn't have to go over those things again though there are some key points that are drawn out as reminders in relation to our recommendation that come from the prior reports.

We also acknowledge that by no means do we have the expertise to full address this and a lot of my comments today are going to be more from my own perspective rather than I am not speaking on behalf of the council in this regard but rather background.

My job with the Department of Ecology in Washington state is involved with permitting but in the limited traditional stovepipe manner my interest in the expertise is around the hazardous waste or RCRA permits and that is just one of many.

I would generally suspect that few people have the broad expertise on all kinds of permits across the board so to ask a question around what is the best one to start with first, I don't know that there is any one person who can answer that it is a tough question and because of the nuances no small group can do this.

If there was going to be a big expanded review many, many people would have to be involved with advising the workgroup on the nuances of that. So again, we didn't try to get into that too much.

I think rather than to go through page by page I do want to ask that we will put up, oh it is already up there, that Appendix D on the summary of the recommendations. So we are going to just start going through those now and just feel free to chime in quickly if you have a question that needs clarification.

So the first recommendation here, now I am looking at what is up on the screen was to set up a more formal workgroup and just to be clear that would be different from a subgroup or a subgroup was council members only, quick appointments, quick turnaround where the workgroup would have more resources and time to bring in experts who are not on the council who have an expertise to share on specific kinds of permits or issues around specific permits.

The second is to assemble data to inform the public on the percentage of permits that address EJ concerns and applicable environmental permits in general. Again, we had a ton of questions and we put those questions in this report as well to help guide EPA as to maybe things to tackle in that broader context or in a more advanced workgroup setting.

We didn't know how many permits of one type or another were issued to EPA as opposed to the many other entities that may be doing the permitting through state, delegated or authorized capacity where primacy is not within EPA but it might be the Corp of Engineers or again a state, it might even be something we have in Washington and perhaps elsewhere there are other forms of local government as opposed to a state.

We have air permitting agencies that are based at the county level, so it goes all over the place where these kinds of permits happen and we didn't really know for sure the percentage one way or the other in terms of what EPA can directly control or they have indirect connections with.

The third recommendation to support TSCA reform to better identify the range and toxicity characteristics of current chemical in use and their applicability to permitting or permitted pollution in communities. I want to put a small caveat into this, we heard from Carl, Region 7's administrator on Monday, not yesterday in our council meeting but he made it very clear that EPA is not authorized to go and lobby Congress and TSCA is something that Congress has set up.

So, although we understand that nonetheless this comment is to support that TSCA reform such that the country has a more up-to-date chemical policy to address these questions that many, many people have. There is a lot of ambiguity and/or things that across the country are being brought up around chemical policies that we think a TSCA reform is cued up to address.

Right now Congress is looking TSCA reform but I just want to be clear, we are not expecting EPA to go and lobby at the same time we want to encourage them to do what they can to support that reform.

The fourth recommendation is pretty obvious, just follow the recommendations of the prior NEJAC Council. I don't think there is anything in those prior reports that we would disagree with so we just want to reiterate keep using those recommendations where appropriate.

Number 5, to require permitting and implementation staff to review available guidance on permitting and incorporating the principles into all possible agreements, formal or otherwise, with delegated states and permitting. We will get into this a little bit more.

In general, we are seeing here the people out on the front line in the Regions where more of the permitting work is being done either directly or overviewed when a state or a Tribe or some other agency has primacy, we certainly want to recommend that those staff are very familiar with these recommendations and the options that we bring up here such that this work can go forward sooner than later.

Time context here, we were not given one in the charge but we do understand that the sooner the agency can start doing this work the greater the chances we can see some opportunity for implementation before the possibility of an administration change two years from now.

But to the extent that these comments have been provided in recommendations it is for, not just the next two years, but it is certainly beyond that.

Number 6, to draft an outreach plan template or form for permitting staff that would contain all relevant community concerns and conditions and include a list of stakeholders focused on recognizing Tribal Nations, EJ communities and other indigenous peoples and again we have the references and I need to thank Suzette and others for doing this work of putting it together. The



background is on the pages that are referenced in the parentheses.

So we think that there is an opportunity for EJ staff to go out and use a template that could be applied consistently across the Regions. Sue, do you have comments you want to add right now? No? Okay.

Backing up, one of the things that happened early on here and Sue was a wonderful provider of a different way to look at permitting and we tried to address this in the paper and that was to look at all the kinds of EJ concerns that we are aware of, that have been brought to the council in the past and try to correlate those with the kinds of permits that are out there recognizing that there are some EJ concerns that are not related to permitting directly, maybe indirectly they are, and others that very much are.

So there was an effort and that is addressed in one of the appendices and I will ask Sue to give a little bit of discussion about that in a second. But I do want to get through the recommendations first just to be sure we cover those basics.

Number 7, maintain an open list of community organizations in Tribal Governments and indigenous organizations in context to permit applicants such that when somebody comes to the agency with primacy, again it could be EPA or a state, and they say I want to get a permit to do this or to build that we would like to see EPA's staff that are involved with reviewing that application to be prepared to give to the applicant a list of here are all the people we are aware of.

It may not be a perfect list but certainly we assume that the Regions should be aware of the EJ communities out there that are around this permitted facility and ask the permit applicant or encourage him to say, here are your stakeholders here you need to work with him and you need to invite him into this process ASAP.

It is just never too soon to do that, we have heard that a lot and we had a little bit of dialogue around how that list is maintained or who gets to be on it or who doesn't and we didn't come up to a clear definition of how that list would happen but the general context is EPA should be able to provide that list to permit applicants so that they know who potentially could be impacted.

They may not know, they may never have thought about it and they need to be aware of that and we want EPA to help that happen.

Subgroup members, if you want to add anything to my comments here, I am not presuming I am catching all the nuances so do feel free to just chip on in.

#### **Questions and Comments**

MS. PESTANA: Hi, can I chip in?

MR. RIDGWAY: Yes.

MS. PESTANA: This is Edith Pestana, Connecticut Department of Environmental Protection. Yes, I think the intent on the recommendation number 7 on maintaining an open list of community organizations and Tribal Government and indigenous organization contacts, I think that can be flexible. I am not sure that it should fall within the permitting staff because they are technical people.

I think that if the Regional Environmental Justice coordinators have this staff that that coordinator should work more closely with the permitting staff in participating in the public notice process and helping the permitting staff with the applicant obtain the list of contacts because the EJ coordinator in the areas should have a good idea of who the effected communities are and who the more vocal individuals are that should be contacted when there is a permit in their respective community.

MR. RIDGWAY: Thank you. Number 8, encourage the greater use of supplemental environmental projects or SEPs. For example, developing, hosting and publicizing training and implementation sessions on EJ oriented pro-active SEPs.

Now, we gave a little context of what SEPs are and it is important, these are voluntary EPA or the state tribal primacy entities cannot require this and this gets into the enforcement side of things where if a business has or a facility has going through enforcement or penalty kinds of work that there is the opportunity to the business being penalized to offset a small amount of the penalty.

This is way down at the end of the road after there has been usually a case brought and deliberations and a judgment ultimately there is a penalty that gets negotiated and it is at that point where the business or facility has the opportunity to do a supplemental environmental project.

It might be to mitigate something that happened as a result of a violation. It might be to do just tell buy emergency response equipment or do a local enhancement project on the environment but this council has heard comments in the past around SEPs and although they cannot be required we certainly think the pump can be primed for good SEPs to be considered and through that enforcement

process which is not directly related to permitting but absolutely indirectly could be, we think EPA's Environmental Justice staff and the other people involved with the compliance and enforcement should be thinking what would good SEPs potentially be? What is going on already in that community?

Not that the community has the chance to come in and negotiate these things but EPA is in a very unique position to understand what the penalty is and the dynamics around what was involved with assessing that penalty and then we think they can help cue up ideas and recommendations but they cannot require it. The business may just say, I don't want to do it, I am going to pay my fine, that is that. But to the extent that these can be considered and cued up for a business that is in the nature of this recommendation.

Number 9, employ EJ good neighbor environmental benefit agreements as part of permitting to more pro-actively resolve EJ concerns. So this is up at the front end. It is certainly possible that a business when they get a permit can put in other non-required elements but are things to enhance EJ dialogue and showing of information about what the facility is going to do relative to the permit.

If it is going to be issued, for example, maybe more monitoring than the law requires that the community will have access to that monitoring information. It is not a regulatory requirement, it is just a good neighbor agreement to let them know what is going on and to help interpret what that data is and/or other considerations around the nature of the business and the permit.

Number 10, to ensure ample representation from both Tribal Leaders and Tribal communities appointed to the council related to the workgroup. Excuse me. This one is very broad and for the council's consideration we wanted to be sure that we felt although we had input from Tribal representation it probably wasn't as much as would be critically important for an overturn review of permitting and we think that the permitting dynamics are very complicated in the Indian land and thus there needs to be a good wholesome comprehensive representation from that community for the permits.

Number 11, incorporating closer and/or independent review of formal consideration of EJ concerns by the U.S. Army Corp of Engineers, EPA, Tribes and State entities regarding the issuance and enforcement of the Clean Water Act and we note Section 404 permits and this is in regard to dredging and dredge fill and there is also 402 but it is complicated and we would like to recommend that more be done in that oversight and/or coordination between what the Corp has delegated the authority to do and what EPA's overarching carrying out of the Clean Water Act would be.

Number 12, allocate more time and attention to the many facets surrounding EJ and cumulative impacts regarding permitting regardless of which government entity has primacy. I think that is fairly self-explanatory.

Number 13, to consider the following recommendations related to the performance partnership agreement. This is something that I have had a lot of background around PPAs, another acronym, but these agreements are in existence as I understand in all Regions and they are set up to clarify and publicly declare what the State, Tribe, other agency is going to do to carry out their delegated responsibility.

It is negotiated usually every two years. It is signed off by the Regional Administrator and the Director of the environmental agency that is issuing the permit and we think that this is a tool that already exists, it is ready to go and there are no limitations on the kinds of things that can be included.

At a minimum, they certainly have to reference what has to happen but there is more that can happen and the PPAs are a perfect spot to recognize Environmental Justice in the work that that delegated authority involves.

So, we have those items A through G. I am not going to go through each of them but we think that this a tool that is ready to go and should be used much more and it needs to be, there needs to be equal support EPA needs to do this, the State has to do that but the public has an opportunity here also to comment on these performance partnership agreements in advance so that EPA and the Tribe or State can understand what the community wants and have a chance to build it into that performance partnership agreement.

Also, halfway through the two year cycle give an update, how is it going? Are they really doing it? And let the public know what is going on there and if it is towards the end of that two year period be sure everybody understands there is a new one that is going to be negotiated and invite in engagement with the community and anybody who is interested early on.

Number 14, consider the following recommendations related to the memorandum of agreement or understandings. This is getting down into the nitty gritty and this is something again that I see in my permitting role the public may not even know about.

When a State or a Tribe or a delegated authority is able to carry out these laws they typically get money from the EPA to do that work. If they don't do it, they don't get the money and they are accountable and these memorandums of agreement or understanding spell that out.

They are legally required, the grants to the Tribes or States are subject to making sure that those elements are carried out and those are also opportunities to engage EJ dynamics in the permitting process in a general sense upon the agency that is doing the permitting and we would like to see those agreements utilized more.

That is it in summary on the recommendations. Any questions on any of these so far and then we will get into some of these other dynamics but anything that has been shared so far that isn't clear or anything that we didn't catch? Nicholas and then I will get to Patricia.

MR. TARG: Thank you very much and I certainly commend the work that the workgroup has - -

MR. RIDGWAY: A little louder please.

MR. TARG: I certainly commend the work that the workgroup has done in bringing this very complicated and difficult issue that goes off in many directions to the point where, where it is thus far? This is a very challenging issue as you pointed out and I think really just so appropriately identified that this body over the last decade or so has put a lot of time and effort into looking at the issue of permitting and that the inappropriate place to begin analysis.

I have a couple of questions with respect, first to supplemental environmental projects. I am a big fan of supplemental environmental projects and have given a lot of thought to them over the years, worked on a monograph involving them and actually helped draft legislation addressing issues of supplemental environmental projects.

So in no way should my comment be taken as a question of the value and the use of supplemental environmental projects. I think that they make a lot of attempts in a lot of cases and encourage my clients to enter into SEPs as well.

The question is, the relationship of SEPs to the permitting process. SEPs are an activity or an agreement that take place after the permitting process has occurred. Sometimes steps involve the development of new permits so I wasn't sure whether this Item 8 addressed permits that might come out of an enforcement process using SEPs as a mechanism or whether it might be something else.

With respect to that as well, whether there might be a way to broaden it to address permits that are modified in the enforcement process through the use of injunctive relief and the consideration of Environmental Justice in the injunctive relief context as well?

That is, if I may, and also just going onto Items 13 and 14 pertaining to PPAs and MOUs and whether there might be an interface between agreements between EPA and the delegated authority, the entity to which is receiving these delegated authorities or other Federal assistance in Title VI and whether those kinds of relationships have been taken into consideration but where that EPA previously issued a draft guidance to recipients of Federal assistance. I believe that document is still in draft but it may be that there is a nexus there as well. Thank you.

MR. RIDGWAY: First on the SEPs and the SEPs, the projects, you are absolutely right Nicholas. The relationship to the permit is a little distant here and we wanted to draw this out. The permit often, most people think, is something that happens up front, it is about something new that is going to happen but certainly they can involve compliance and enforcement to be sure when a facility is permitted they have to do certain things and if something doesn't go well then there should be efforts to correct that and in some cases enforcement and/or penalties are involved.

He is bringing up the point where he could trigger a new kind of a permit and so everybody understands permits are not always just about new things, a business that already has a permit may want to change a particular process.

They want to bring in a bigger way to handle this or that or they want to put in some new environmental protection equipment and they need to modify their permit to do that or they may just have a permit that is scheduled to expire after a certain number of years so it needs to be renewed and all of that is around permitting, so it could trigger modification to that permit and we think yes this would be applicable in any regard the SEP to change in a permit as well as in regard to an enforcement.

On the second point for Title VI and the agreements, absolutely there is a connection there. There is money coming from the Federal Government going out to the delegated authority and Title VI of the Civil Rights Act makes it very clear, you cannot discriminate when you are using Federal dollars and that applies certainly to the State or the other entity that is taking those Federal dollars.



So there is a very strong connection there to be sure that Title VI is applicable and the States may sign off in their grant process of yes we are going to follow all the Federal laws and that includes Title VI but certainly that can be drawn out more to in the permit languages say, we want to be sure you understand that Title VI is applicable here and there is not question about that. Did that answer your questions Nicholas?

MS. HENNEKE: John, can I join in on this equinum a moment?

MR. RIDGWAY: Absolutely. Well go ahead Jody.

MS. HENNEKE: Jody Henneke, we had that same discussion on the subgroup about SEPs because SEPs to me are traditionally are associated with enforcement. The group at least from my perspective felt very strongly about the concept of SEPs and wanted to tie the nexus but I would encourage us to clarify so that it is not confusing because I think most folks automatically think a SEP is an enforcement tool.

Some permitting modifications as John said are, some permit modifications are a result of an enforcement action. So we can say that with SEPs but I think we have to be pretty clear about it. The traditional up front grass greenfield permit kind of thing, to me it makes more sense to use special conditions within a permit that often times you can accomplish exactly the same thing that you are trying to get to with the SEPs but it is not a punitive action which a SEP actually is a punitive action. That is my opinion, that is the opinion I voiced on the workgroup.

MR. RIDGWAY: Quickly Nicholas I want to go around to the others.

MR. TARG: I think that that makes an awful lot of sense to perhaps break out the SEPs in an enforcement context to clarify the role of Environmental Justice and enforcement that involve permits rather than to break out SEPs of that context for the reason Jody that you just mentioned.

MR. RIDGWAY: Thank you. Patricia?

MS. SALKIN: Patricia Salkin, Albany Law School. I want to commend the subgroup because I didn't know how after the last meeting we were going to be able to tackle this charge and you have done a great job.

I just had a couple of comments on recommendation number 9 which is the good neighbor or environmental benefits agreements and maybe some of it is semantics I mean I am glad that the concept is there. We have done a lot of work at Albany Law School studying, analyzing, thinking about community benefits agreements which I think is the same thing it is just we are wording it differently here.

I have some just conceptual concerns about an active role of the government in being a party to any kind of negotiation on these typically private agreements. I know in some states like California the government may be involved but in most of the other states they are not, they are the community groups with the project applicant or the project sponsor and so there are a lot of questions about community empowerment and bargaining.

There is also a constitutional question I think once the government gets involved as to how far the government can push it if there is a public side to this negotiation or contract. If it is a private contract between the community coalition and the project sponsor some of those issues go away.

There is also enforcement problems with these because a lot of the deliverables come after the permit has been issued or after in a typical CBA that is not tied to a permit after the community has already given up their rights to challenge the project in a more vociferous way because they have accepted these promises to be delivered in the future.

So I guess I like the idea, I am a general supporter of CBAs in these environmental benefit agreements but I think I would rather argue that the recommendation ought to be instead of employ to have EPA formally study this and really look into some of these issues and figure out how it can be used to enhance quality of life in EJ communities.

I am not sure it is really best to be tied into the permitting and I am not sure I would make it a condition of a permit. I might rather say that the permitting authority EPA could consider in reviewing a permit application whether there is a CBA or an environmental benefit agreement, that is different than EPA actually being involved in negotiating what the community wants.

MR. RIDGWAY: Thank you. I don't think there are limitations on this and absolutely there should be more research on all of these recommendations but if a community can negotiate an agreement with a business without being directly involved with a permitting entity, great, and you are right the EPA or the agency would not be in a role to enforce that, that is between the business and the community but this is by no means to put limitations on what a community can do directly with the

business whether or not it is tied to a permit.

MS. SALKIN: Right, my concern is that if EPA comes in and because of this has a seat at the table they may be constrained by things that they can push to be included in here which the community in a private agreement can push the envelope as far as it can go because in a private agreement there are no constitutional constraints to parties or if more parties can agree to anything they want. When the government gets involved I think that there become other constraints on the process.

MR. RIDGWAY: Thank you. Let me get some other cards up here, I am sorry I address other people who have cards up here first. Edith, go ahead real quickly.

MS. PESTANA: Edith Pestana, Connecticut Department of Environmental Protection. Our public act actually includes the language that requires the local community to meet with the respective community, EJ community, and discuss a local community environmental benefit and then take that back to the permit applicant.

Be that as it may, what we are finding is that when the communities, the EJ communities, start negotiating with the permit applicant what they wanted in the last three negotiations is for DEP to actually provide them with the technical assistance because what they wanted, and this is just my personal experience in Connecticut, is they wanted reductions and they wanted to negotiate the reductions through and include them in the permitting process.

So if you are adding omissions this over here reduce them and right now we are actually going through a case where the negotiators, Connecticut Fund for the Environment, the City of New Haven and New Haven Environmental Justice Network wanted DEP to do the enforcement on their negotiation and to include it and make the changes in their air permit and we have been involved in that now.

So as much as we wanted to stay away from it, the community brought us back in and said, look we want our negotiation enforceable because we are looking for pollution reductions. So yes it is something that I think and we are learning through it as well but I think it is worthwhile sort of venturing and looking at it because it is a mechanism that communities can use to sort of balance an expansion and through that expansion actually take a permit and maybe get reductions through it.

MR. RIDGWAY: Thank you. Teri, you had your card up.

MS. BLANTON: Okay, so all of this is very new to me.

MR. RIDGWAY: That is okay, it is new to a lot of folks.

MS. BLANTON: 402s, 404s which is very important.

MR. RIDGWAY: And Clean Water Act we are talking about here.

MS. BLANTON: Yes, and delegating the authority to other entities but it is my understanding that EPA still has the ultimate responsibility of enforcing the Clean Water Act.

Then we talk about Title VI and not giving money to, you know, cutting off funds when they are not doing their job. So when does that start? I mean, do we completely destroy every stream within a watershed before EPA will actually step in and exercise that authority?

MR. RIDGWAY: Okay, Title VI is not about cutting funds off, it is about saying you cannot discriminate using Federal dollars and so just to be clear there is a little distinction between the two and I am not going to be able to answer when EPA gets into or any Federal entity gets into accountability around Title VI it is there and we want to be sure that everybody understands that it is there without getting into the details of how it is implemented.

MS. BLANTON: We can leave Title VI out of it all together then. That is very new to me and it is more I am going to study when I get home. But the cumulative impact under the 402 and the 404 and the fact when the states or the other entities are not doing their job and actually looking at a cumulative impact so when does EPA, I mean, how do we make sure that Environmental Justice because I just read an article last week that said that EJ is pervasive when it comes to looking at mining permits so that is sort of like the, I don't know how to talk about those in a way that talks about everything.

MR. RIDGWAY: Let me suggest that you can feel free to write some questions down into the context so that we can provide some clarity on the language here. I am very open to doing that for the whole group.

This is very complicated. We are talking about the Clean Water Act which EPA has the overarching implementation of but then they also put right into the law that really the Corp of Engineers has a special role here in the 404 permit. Whereas, EPA and/or the delegated agency has the lead role on the 402 side and it is very complicated in how that is carried out and what kind of oversight responsibilities EPA has and when they kick them in, we are not getting into that here we just

need to recognize that that needs attention and it is relevant to the charge that we took on. So I don't mean to be evasive but that is about as far as I can get into it at this point. The permitting panel that is going to come up later may be able to address that too, that is a good point.

Lang, you have had your card up a long time.

MR. MARSH: Lang Marsh of National Policy Consensus Center. I wanted to first of all congratulate the workgroup, you did an amazing job in a very short amount of time.

I wanted to focus on questions of 4 and 12 or recommendations 4 and 12 because they raise in my mind whether the question that is in the charge is really the right question.

Are we best advised or are we best at advising EPA to focus on permit types versus permits that affect communities that have Environmental Justice problems and any permit that has a significant entity potentially on one of those communities could trigger an EJ analysis.

That would be the way that EPA would determine in their charge language whether they are they type of permit to focus on to incorporate Environmental Justice and to incorporate cumulative impact analysis and there is that wonderful quote that seems to bear Vernice's eloquent way of putting things of that proportional response from the earlier cumulative impact report that I think really says it very well and so I think you flagged that question and I guess there are two things.

One, should there be some debate in this group about how to craft this report in response to EPA along those lines or at least should we not give a lot of emphasis in the final report to that question?

MR. RIDGWAY: Lang had a key point here. We didn't even think the question was really well crafted to begin with. What permit type to look at? Facetiously I could say, yes look at them all. It is not a matter of this one or that one. It is very complicated and there is a bigger picture here that needs to be looked at around cumulative impacts, multiple permits, multiple permitting entities and no one permit is going to be the silver bullet here for EPA to focus on.

So, I am just recognizing that we said that too and maybe there is a better way we can characterize that in here but this we couldn't get into it much more than that.

MR. MARSH: The thing that I am concerned about actually is that, I have been in the permitting business for many decades in two states, if you tell a permit writer that they have to look at something it becomes a check off item and it takes time to do and it doesn't really necessarily accomplish anything and I would be very disturbed if the result of this was that certain types of permits had to have a check off when the real issue is how do you analyze impacts in a community that is suffering from particular kinds of stresses?

MR. RIDGWAY: Thank you, I agree. I was at a local EJ meeting about three weeks ago in Seattle and one of the comments was, a community just like EPA may want to have their own EJ plan 2014 or whatever time frame they want to put there and permits should be considered around that much more comprehensive overarching EJ strategy for a community.

Some communities want to do that first and say, let's see how the permit application aligns with what the community needs and what the community's issues are so absolutely, good point there. Sue.

MS. SALKIN: I was going to respond to Patty but instead I am going to respond to Lang. You know, that was actually where I was hoping this conversation would go because my sense and part of the reason why we discussed the previous reports is as a body we seem to be going toward and EPA with us as a partner let's figure out a way to address the communities with the highest burdens and the highest vulnerabilities and they now have tools that allow you to do this.

When you identify that community, I think Bob Perciasepe said yesterday, community is the organizing principle. It really is. Then you say, okay these are the types of permits. It is every conceivable permit authority that we have here in order to get this community relief and pollution reduction.

If the group wanted to say that I think that could be really sharpened in the report in a powerful way.

MR. RIDGWAY: Vernice?

MS. MILLER-TRAVIS: I just wanted to say to the body and Patricia you raised a really excellent set of questions that if you have suggested language or thoughts about ways to sharpen or clarify or even change what is in the recommended language please forward that to John and we will certainly make every effort to integrate that into the next iteration of the report.

But I thought that was a really good point you made Patricia and I think we were not clear enough about distinguishing between an environmental benefits agreement that is solely a relationship between a community or an impacted party and the facility owner or operator is separate from the category of folks of environmental benefits agreements, where the government can and should have a role.

But they are two separate categories and we really need to be clear about that. But there may be other things that you all are seeing that that language is not as clear as it could be or as sharp as it could be, please let us know and let John know so that we can sharpen the next iteration of the report.

MR. RIDGWAY: Thank you. For the non-subgroup folks I am going to kind of focus on your first. So, I am going to go with Stephanie please.

MS. HALL: Thank you. I am sure I echo the comments of many in saying that the subgroup really did do an outstanding job on capturing what is a very complicated and complex subject and distilling it down to a very digestible start and I appreciate that work and I don't want to beat a dead horse -- I didn't say Stephanie Hall with Valero Energy, I apologize I was supposed to do that at the beginning.

I don't want to beat a dead horse but I did want to again as a industry representative echo Patty's comments. I don't know that there is a need to try to further explain, I think she was quite articulate in explaining the concern and the concern I had is I think we have to be very careful about impeding the flexibility of a business to work directly with a community to accomplish results.

Sometimes I think when you bring in a third party entity it can have the effect, not always, but sometimes it can have the effect of slowing down that progress and so I think Vernice said it well, John said it well in making the comment that maybe more clarity is needed surrounding recommendation number 9 and I appreciate the opportunity Vernice put on the floor for comments to be submitted in terms of trying to better clarify that language.

So I just kind of wanted to reiterate the importance of making sure that we get that part right because I know that there are companies that are very willing to work with communities and incentivised to do so beyond what they have going on regulatorily but because it is the right thing to do and we don't want to impede that goodwill and good spirit of that company or industry. Thank you.

MR. RIDGWAY: Thank you. Hilton?

MR. KELLEY: Hilton Kelley, Community In-power and Development Association, Port Arthur, Texas on the Gulf Coast. When it comes to permits I know that there are a few that kind of interest the southern region when it comes to refineries and chemical plants and that is the flexible permit rule.

The flexible permit sort of, it didn't provide any transparency and now that a lot of the industries in the Port Arthur, Beaumont, Louisiana area are starting to de-flex within Region 6 because of certain laws that are coming down within that particular, well within Texas I will say that.

De-flexing is starting to provide a little bit more transparency on what type of units are coming online, what type of air emissions will be emitted and I think that de-flexing is a pretty good process that has started in Texas and a lot of the organizations out there are really happy about the de-flexing of some of the facilities.

As a matter of fact, Valero has decided to de-flex their permitting process and also Motiva has voluntarily de-flexed and from what I understand Totale never did have a flexible permit which has always allowed us to have more visibility as to what type of units were being brought on and what type of air emissions we are being exposed to.

When it comes to having the Environmental Protection Agency from a Federal level and a Regional level being involved with the whole process of negotiating with facilities when it comes to Environmental Justice groups, I think that that is paramount in assisting groups that would ordinarily have no ability to get to the table of the industry because they were not well open to possibly working with a lot of community groups, for lack of a better word.

For years I have worked in the Environmental Justice field dealing with, well Valero before it was Valero was Premcor and there was a manager working there, just to talk about one particular case real briefly, and he was not open to talking to people that lived on the --- line so to say.

I mean he was rude, he was very arrogant and it wasn't until we started filing lawsuits and writing petition letters to the EPA to get something done to give us some type of reprieve from the emissions we are being exposed to, that those doors were open to Environmental Justice groups like the Community In-power and Development Association.



But for the last three years I have been working very closely with Stephanie Hall who is sitting at the far end of the table here and there is a new day at the Valero Refinery due to a lot of the enforcement actions, I believe, that have come down but yet this particular entity has been more willing to work with our group. So I think that EPA has played a critical role in bringing that about.

MR. RIDGWAY: Thank you. Jolene?

MS. CATRON: Thank you, Jolene Catron, Wind River Alliance. I want to thank subgroup for their comments, their comprehensive comments under such a short time frame and also I think your Tribal input is really on the spot and I will be talking a little bit more about what included in this because that also reflects a lot of the comments that we have included in the Plan, 2014, EJ Plan 2014.

So actually I am not really here to talk about Tribal issues on this one. What I would like to talk about is the hydraulic fracturing section on page 14. You are listing these out by types of relevant permit types and just as a clarification hydraulic fracturing could conceivably come under the Safe Drinking Water Act not necessarily the Clean Water Act so there is a subheading that is missing there.

But hydraulic fracturing is exempt from the Safe Drinking Water Act by the Energy Act of 2005 under the Bush Administration, so that is something that EPA is currently studying. They are studying the impacts from hydraulic fracturing so in this paragraph it says, "These chemicals are also contaminating ground water."

There is no proof, well there could be some proof but it is hard to prove that these chemicals are contaminating ground water because we don't know what are in these chemicals because they are exempt from being listed.

So I think we need to be very careful about how we characterize hydraulic fracturing and there is a strong national push right now to be hydraulic fracturing back under the Safe Drinking Water Act. States have realized that that is the trend and like in Wyoming where I live they have, and you and I talked about this a little bit John, they have required industry to list the constituents that are in their fracking fluids.

When hydraulic fracturing, when the fluid itself actually comes under the underground injection control system that is something that I am dealing with in the community that I live in.

The energy producer is re-injecting all of the fluids produced in coal bed methane production into a re-injection well and so that includes all the hydraulic fracturing fluids, all the drilling fluids and so that is when that comes under the UIC Program and so I think there just needs to be a little bit more clarification in this paragraph and I would be happy to help out with that.

MR. RIDGWAY: I will gladly accept that help. Thank you. Shankar and then Jody.

MR. PRASAD: I want to first off, Shankar Prasad from Coalition for DNS at ---. I want to acknowledge the hard work put forth by Edith, --- Sue and John in spiriting this effort.

A couple of clarifications, one, some of the issues that brought about here are really in part and but at the same time --- recognize the extent of the details that need to be given are really hard and that is the reason that we are recommending EPA to form this subgroup and so some of the issues that we are talking about need to be sort of dealt with that should there be a subgroup and just that is something an observation.

Also the committee, this one comment I always have is this MOU, this agreement while it is nice to see that there should be flexibility for the industry and a community to enter agreement the challenge becomes the enforcement capability of that.

So if it does not work out and the permit has already been issued all we are doing is postponing or ending up in a litigation. So to the extent we are kind of cognizant of that and recognize that it is important because EPA --- in their state or at their local delegated authority wise, we feel at least in my opinion I think it is better that it happens in consultation with the government body but that it is signs are not but at least it is at the table so that additional efforts could be made so that our work is enforcement and that is where we are now.

The other piece of that is any of these agreements have to have an open process not a closed process, that is very important and some of the best examples of the issues that came out when straight up California and the railroads got into --- and it became a mess for about two years, so those are just my initial thoughts and also a question for the Chair and the EPA staff, we will have an initial response from the EPA staff today.

MR. RIDGWAY: I am not expecting that, I don't know, but I want to keep the focus just, you know, remind everybody this is a preliminary report so a lot of these details we do not expect to perfect in this preliminary report but certainly to the extent we can build them in to remind everybody they



need more attention we will do that.

MS. GARCIA: I was just going to add quickly that we have all received the preliminary draft and we are reviewing it and so I don't think since we did just receive it we plan to take back the recommendations and we appreciate all the work that has gone into it, so we will be discussing a little bit later but not, I guess, concrete responses to each one.

MR. RIDGWAY: Thank you. I am going to call on Jody and then I am going to ask for Sue to give us a little bit of a background on that review of the comparisons of EJ concerns and permits. Jody.

MS. HENNEKE: Jody Henneke with the Shaw Group. My comment is a combination of what Patty was touching on and Edith and Vernice and Shankar and that is from my perspective having been involved in permitting across several states as well in some pretty difficult situations a regulatory agency cannot put in a permit something they have no authority over.

That makes it more problematic for some of the good neighbor agreements and you don't want to, as Stephanie was saying, you don't want to stifle any creativity on the part of that community and the applicant or permittee to do the right thing.

But where I have seen so much frustration happen is the community looks to, as Edith was saying, looks to the regulatory agency to enforce that agreement and they don't have the authority, none whatsoever, to enforce the components of that agreement was just magnified magnificently. The mistrust and everything that can spin out of that.

So, as much as we can crystalize that difference it will be helpful. The other thing in Texas what I saw happen a lot was that the staff, we have a Public Interest Council there that is part of the regulatory agency and they are statutorily a party but they still cannot sign off on something for which the agency has no authority.

The agency also has an alternative dispute resolution staff that can help facilitate those discussions and as everybody knows it is a capacity issue. The neighborhood often times, and I use that term loosely, doesn't have the capacity with which to do the research necessary to get to where they want to get.

But good neighbor agreements are awesome but it is a separate instrument from the permit.

MR. RIDGWAY: Thank you for that clarification. Okay, I am going to ask Sue to just give us a quick general overview of that comparison you did that is in the appendix.

MS. BRIGGUM: Sure, thanks and if I could just, Teri asked me to mention one final note on the good neighbor agreement. One of the hopes, and we are trying to be soft on this, is that there are several forms for these.

Some are the permittee and the community, some are kind of supplemental agreements within the bounds of the permit or included as an addendum but not necessarily enforceable and then the ones with the really big money in my experience are between the local government and the permittee based on their land use authority.

That is where EPA if they had the very least a consulting role might be very helpful in making sure that those agreements where their real resources benefit the community that is most impacted by the facility rather than the one at the other side of town that doesn't really need the money. So, just one thing we were hoping for.

If you could look back on page 2 and recommendation to that is basically the discussion and the appendix is the data that formed the basis for the discussion.

As we start on this and very much in mind of what Lang said about it is really the community that is the focus rather than the permit. We thought you know it would be really important if instead you started with a type of permit rather than all permits within a community to have realistic expectations of impact and we thought how would EPA communicate that?

We ask information about, well how many clean air permits under new source review do you issue, et cetera? And we didn't get anywhere with that so we decided to do it ourselves and this was our collective wisdom and the best job we could possibly do understanding EPA will do a much better job when they turn themselves to this kind of evaluation.

But we thought communications would be important to understand how many permits EPA can directly influence either in terms of issuing themselves or laying out the criteria for delegated state programs so that the State has to follow those same criteria so that communities would know, oh well you know when it comes to air emission and we went back to all of the old NEJAC reports and

skimmed through them to get all the concerns that were expressed.

We looked at some of the old transcripts, we had a conference call. We tried to think of every concern that had been expressed in Environmental Justice meetings and then match that up with, as best we could, what we understood about the scope of permits and what they would actually be able to handle because we thought it would be helpful for EPA to communicate we can do so much and we cannot do this.

We were thinking about, for example, if you look at all of the RCRA and the waste issues, the current policy interpretation of EPA's authority is that they can issue permits or for the State to issue permits for hazardous waste facilities and municipal solid waste facilities but nothing else. Everything else is up to the State.

That would be an important communication because only four percent of the waste generated per year in the United States is covered under that scheme so it would be very important for people to understand how much EPA could influence on this.

So this was our best shot to try and be helpful in terms of information and we thought it would be helpful for the agency too to think within that lense and then perhaps realize a community based approach in maximizing all authorities might ultimately be most successful quickly.

MR. RIDGWAY: Thank you Sue. It is obviously very good for people to know what they cannot expect within a permit and thus what are other mechanisms to address those points if not within the permit that could be incorporated comprehensively.

So for a time check here we have another about 10 minutes, I would like to summarize what I have heard and pay attention to be sure if I missed something that has been brought up here and I expect what I will do is ask if you are comfortable with us taking these comments back and working with them and then I expect what we will do is ask for a vote of confidence to move this to the whole council for your review in a subsequent meeting that we will have and you will have a chance to read the language and be sure you understand it before we will ask for that sign up, I am not trying to push anything here.

So in terms of recommendation number 9 and these agreements, these community based agreements, we need to put a little more clarification in there around where EPA or a delegated agency has leadership or not and certainly in terms of enforcement of those agreements.

We did not get into that. That is not something that EPA can do they might be a party to it or they might not but we have to be clear about that and to the extent possible we would encourage that to be open. I mean if two people want to negotiate privately that is their choice but we certainly would like to see that as an open process in general and again it is not enforceable.

The comment from Hilton on the de-flexing, I don't know what de-flexing is so I might ask you to draft something for us to clarify how that relates to this and that would be helpful.

On comment number 14 regarding the fracking and whether or not it is the Safe Drinking Water Act or the Clean Water Act or applicable, it sounds like we have to get some corrections folded in on that and I am not an expert on that so Jolene you have offered to help with that.

Those are the bigger ones I have heard but maybe I will ask the other subgroup members now what other points that we want to be sure that we try to address if anything that I have not already brought up. Wow, I cannot believe I got it all, okay.

MS. MILLER-TRAVIS: Just one question?

MR. RIDGWAY: Yes, Vernice please.

MS. MILLER-TRAVIS: Vernice Miller-Travis, Maryland Commission on Environmental Justice and Sustainable Communities, I am sorry I have forgotten to say that.

Nick, was there something that you wanted us to say or clarify more about the SEPs?

MR. TARG: Vernice, thank you very much. Nicholas Targ with the American Bar Association. With respect to Item 8, the suggestion is to broaden out the issue to address enforcement more generally and two bullets they can see under that would include modifications of permits or considerations of Environmental Justice issues in the modification permits within the enforcement context and that would include both the use of SEPs and also injunctive relief. I would also like to again flag the role of Title VI within the context of delegated agreements.

MR. RIDGWAY: Okay. I might ask you to suggest some draft language on that if you could that we can incorporate in. Thank you. Anybody else? Otherwise, I am going to turn it over to Victoria for a process here.

MS. ROBINSON: Okay, oh I think Father Vien.

MR. RIDGWAY: Father Vien?

FATHER VIEN: Vien Nguyen, Mary Queen of Viet Nam Community Development Corporation acknowledging that what I am about to bring up is not within the charge and it is beyond what you are talking about thus far.

What is presented by the group here it is just amazing but it deals with the ordinary day of permitting. My concern being from where we are in the Gulf Coast where that is a potential for an emergency every year at least.

My concern here is the permitting process in case of emergencies. All that we brought up may very well be just suspended or dispensed with. So the question here may be from another perspective of the EPA is if we present all of this then what would be the fundamental, the foundational requirements in case of emergency because a lot of times when it comes to emergencies then EJ communities would be the ones being thrown at, so that is my concern.

MR. RIDGWAY: I think that is an appropriate thing to build into this and we will put some language in there on that and absolutely that is not the typical circumstances that are emergency conditions and we would not try to imagine every possible scenario but to make a general reference would be very appropriate. Thank you. Victoria? Oh, I am sorry, Sue you still have something you want to add?

MS. BRIGGUM: Just a quick response that is a really good point. Remember when Mathy Stanislaus was here we asked him about that and he said there were no emergency permits or waivers during the most recent spill thing and that is a very important principle. I think that EPA evidenced this time and we should include that as good practice.

MR. RIDGWAY: Victoria.

MS. HORNE: One point.

MR. RIDGWAY: Oh, I am sorry.

MS. HORNE: Sorry, it is Savi Horne. I just recall back in the day the enforcement subcommittee did a lot of stuff around SEPs particularly looking at egregious conditions in Chester, Pennsylvania and so I am not really sure if Victoria would be able to get some of that material back so we can kind of look at those case scenarios and kind of look at the language in that we have presently on SEPs just to see if we had captured some of those early thinking on enforcement and use of SEPs.

MS. YEAMPIERRE: I am a bit confused, are you saying –

MS. HORNE: The enforcement subcommittee of the back in the day NEJAC.

MS. YEAMPIERRE: And you want me to pull all the information?

MS. HORNE: Yes, there was some particular language on the use of SEPs and recommendations and I just would like to look at that again.

MS. YEAMPIERRE: I will see what I can find.

MS. HORNE: Thank you.

MR. RIDGWAY: I might ask for a variation on that theme that this could be something that a more expansive group would certainly want to look into and we can make a quick reference to prior work on SEPs.

MS. HORNE: I agree.

MR. RIDGWAY: Thank you.

MS. ROBINSON: Okay, process wise. Normally, the next step would be to take your recommendations, your suggestions for revising this document and incorporating them and then presenting to the council via ballot a revised document and once you get a choice of approving, approving with revisions or not approving. Remembering that it requires a full consensus agreement of all respondents to be accepted.

Now, I just want to make sure everybody is clear that that is the process we normally would follow. Do you feel that there is enough revisions or significant changes that you think you need to have some more deliberation on in a call or do you think this will suffice to just take these recommendations, these revisions, they get incorporated by the subgroup and then they produce a final draft that is submitted to your final approval.

That is the game plan I was thinking but I want to get a reading from the room to see if that is your understanding and expectation.

MR. RIDGWAY: Before we answer that I am going to go ahead and acknowledge Elizabeth here.

MS. YEAMPIERRE: I just wanted to ask Father Nguyen if risk management plans are a

way of addressing the question that you raised?

FATHER NGUYEN: Would you clarify the risk management plan for me?

MS. YEAMPIERRE: Each division in EPA is required to have a risk management plan and when you are looking at disaster relief and you are looking at things that are unexpected there are initiatives that need to be taken to reduce the risk.

So, I just wanted to find out whether that is one of the ways that the issues, the things that happened on the Coast can be addressed.

FATHER NGUYEN: It is possible but the reality of it is, I have mentioned other problems brownfield(s) kind of conference that I believe EPA had called the states to do that already to have some plans for disasters. Since 1984, if I recall correctly, Louisiana still does not have it. So, that is my concern.

MR. RIDGWAY: One slight tans gentle thought and then we will get to Victoria's question about the next steps. It was also brought to my attention that there is a lot here even in this preliminary draft and some advice was passed on that it might be good to focus on a couple two or three and kind of bring them up to the top, maybe some general things so that it might be helpful to point out higher priority issues within this. So, if you have thoughts on that in terms of crafting it we can do that but we are certainly going to include all of these recommendation.

And then I think moving onto Victoria's comment I guess I will ask the question here, do you as a council feel comfortable that we have addressed the points in this discussion today, as well as in the draft, that you want to with the comments taken today feel free to move it to your hands now as we put the comments together for the whole council to vote on or do you want to have the subgroup go back and do some more work on this?

So, I will make the recommendation that the council adopt this as presented and with the caveat that we will incorporate these comments in writing, send them back to you and then we will set up a process to vote on that document when you have a chance to see it. Is that a clear recommendation?

MS. ROBINSON: Right. The council will still have that final ballot. The question is whether there is a need for additional deliberation on the revisions that are going to be made, put into writing or whether you agree with the basic context and think that the direction of these revisions you suggested today will be fine and you just need to review the language as part of the final ballot.

MR. RIDGWAY: Lang?

MR. MARSH: The only caveat I have is that I didn't hear in your recitation of changes any mention of the issue of changing the emphasis of the report to enhance the notion that community based process as opposed to by permanent process and I think Sue spoke to that a little bit at the end on her analysis.

I would just like to see somebody, and I offered to help, put in some language that makes that point as maybe one of the two or three or four points that get the most emphasis.

MR. RIDGWAY: I am fine to see some language that makes that clear that we are not looking at permit by permit here but the bigger overarching issue. Shankar?

MR. PRASAD: Lang, that is a very good idea and I know that you will be able to provide the right language and we can work on that. But related to that, is it worth seriously considering prioritizing communities in each because while one can think of all communities equally need this but you cannot make those changes across so easily but is it something that we have -- in some of the reports of previous reports from this body we have said that each Region identifies priority communities and then look at the permitting on this issue in those communities. Is that something that you think is worth pursuing as well?

MR. MARSH: It is a little different point but I do acknowledge that this group, and EPA put a lot of effort over the past years in trying to prioritize through EJ Seat and other tools those communities that ought to have priority for enforcement or whatever, so I don't know that I have a strong feeling about including it in this report but I think it would be worth mentioning that use of the focus on permitting in communities that have the greatest burdens seems like the proper way to deal with this.

MR. RIDGWAY: Okay, just two more, Stephanie and then I will get to Teri and then we will take a vote here.

MS. HALL: Thank you, Stephanie Hall with Valero. I think I am fine with the approach that John recommended for moving forward. I guess I have a question in the sense that this particular setting did not allow us to really comb through page by page the draft report and while we did share some comments here, I guess if there are additional questions or comments will there be an opportunity during



the process that you are to go to John for us to further delve into things or do we need to get it all out here I guess is what I am trying to get a feel for?

MR. RIDGWAY: I would suggest certainly you need to read the whole report to get the context of the recommendations. I doubt there will be much deliberation but if the council wants to any individual bring that up when you see this next draft that now will be in the council's hands there should be opportunity to deliberate on that. Victoria, go ahead.

MS. ROBINSON: I would add that as you are reading through don't wait until the final draft, read through it, if you have some comments email it to the entire council, those comments, so that the subgroup can see them and everybody is aware of your rationale behind your comment change.

I think that is what we would do and that it would make it much easier that they can then if somebody disagrees then again, but we need to make sure the deliberation is done in a public setting but if you are just submitting your comments, go ahead and submit the comment to John and cc everybody.

MR. RIDGWAY : So it is not too late. Certainly, if you want to write down some justifications so we can all understand the point being made that would be helpful. Teri?

MS. BLANTON: Teri Blanton, KFTC. So where does the public comment come into play with what we say? If this is put out there and the population or the general public has the opportunity to comment on this whether online or whatever they don't –

MS. ROBINSON: Your recommendations are not subject to public comment.

MS. BLANTON: No, I am not talking about our recommendations I am talking about how do we know how the general public feels about the permitting charge in the first place?

MR. RIDGWAY: We don't know how, they certainly the public can express their issues, concerns, questions at any time to EPA or the authorized agency around any kind of a permit and they don't need to go through the NEJAC to do that, so we are not trying to incorporate that. The public can comment when this goes out as they can on all the prior NEJAC reports when they go out but we don't have that built into this process.

MS. ROBINSON: I want to add though that during the August and September teleconference calls as well as this meeting, the public has had three different opportunities to provide input on the dialogue that the council has had. They have actually heard the conversation so there has been three different opportunities.

That does not stop, and John said, individuals from commenting on, hey NEJAC I think you are wrong on this but NEJAC is moving forward with its advice because its advice is to the council, I mean to the agency.

MS. BLANTON: So I think my question is, is because there is very limited grass roots representation here how do we know that we understand the problems that the communities face when it comes to permitting and do we have the opportunity always read their comments and what they put online so that we feel like we are really educated about the issues.

MS. YEAMPIERRE: Teri, my understanding is that there are seven CBOs, seven NGOs and three Tribal, so I think that grass roots representation is at least half of the NEJAC which is pretty substantial and more than it has been in previous years according to what I understand.

MS. HORNE: Can I just hop in, it is Savi. I think John's point and just being on the score by Elizabeth is that it is trying to have a very transparent process in terms of developing the work product and building consensus.

So by us continue to comment on this work in progress it would help us to elevate the community concern that you are raising and to represent those viewpoints even if you are not part of this particular subgroup.

MR. RIDGWAY: Thank you. So at this point, oh Vernice excuse me go ahead.

MS. MILLER-TRAVIS: Teri I, Vernice Miller-Travis, Maryland Commission on Environmental Justice and Sustainable Communities, I share your concern and so last night I took the opportunity to ask Stephanie Tyree and her colleague from OVEC to please read this specific section on 402 and 404 permits and to give us some feedback about what they thought about it.

Stephanie gave me comments in writing, being Stephanie, and I plan to mention them to EPA when we have this dialogue with EPA but also to feed them back to our subgroup process as we have revised this because she makes specific comments in writing about what we have written about the 402 and 404 permits and I would like to see at least that factored into our next iteration.

MS. YEAMPIERRE: We are about 12 minutes past the time. I just want to say in closing